

United States District Court, Scranton

David A Gambino  
Plaintiff/Victim

3:18cv2241

case no: none assigned

Federal Correctional Institution Schuylkill,  
Warden, AHSA Simonson, Located at  
P.O. Box 759, Minersville, PA 18651-0759

NOV 20 2018

PER JH  
DEPUTY CLERK

Motion for Emergency Restraining Order to  
End Retaliatory Punishment Against the Plaintiff  
Who Filed a Prison Rape Elimination Act Violation  
Against Staff on 11/14/2018, And Motion to  
Order Defendants to Immediately Show Compliance  
to Title 42 U.S.C. 30305 Prison Rape Elimination  
Act Compliance, and or HALT Eligibility of  
Federal Grants pursuant to U.S.C. § 30308(a)  
For lack of Compliance

Now Comes Plaintiff, David A Gambino, whom  
reported to the mental Health Staff of  
F.C.I. Schuylkill that AHSA Simonson, a  
appointed Health Administrator, had stated  
the Plaintiff could obtain his needed medical

walking can in exchange for a "Blow me" offer - referring to a sexual act on or about Oct 28, 2018.

Plaintiff is a mental health Plaintiff with chronic PTSD caused by child hood sexual abuse, and has crippling anxiety and panic attacks that have, in 2016, caused 2 suicide attempts while in Bureau of Prisons Custody.

Upon reporting the sexual violation to the mental Health Staff, which includes Plaintiff's reports of unmanageable panic attacks, anxiety, and PTSD flashbacks, the Mental Health Staff choice to not separate the Plaintiff/victim from the AUSA Simonson, whom upon visual contact, the Plaintiff's mental health becomes unmanageable, and Plaintiff's fear overcomes him as well.

Defendants, instead of providing the separation the Plaintiff was told he, the AUSA Simonson, would be told to stay away from the Plaintiff, but still be allowed to within the Plaintiff's presence.

Plaintiffs open expression of fear he will be forced to perform falacio (Edon job) would not cease when AUSA Simonson still has

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access to Plaintiff, and still is in a Authoritive Roll.

Plaintiffs reported panic attacks, anxiety, and PTSD side effects of flashbacks, and basic fear of being forced into sex was ignored as a factor to put the Plaintiff in Protective Custody, or put the Plaintiff on the Compound while the ASHA Simonson was, and could not be in any contact with the Plaintiff/Victim.

Instead, Plaintiff was denied Protective Custody and told the ASHA Simonson would be on the Compound, within view of Plaintiff, and still have access to Plaintiff ~~as his~~ as a Officer, and as a Authority over him - and within reach - but with a Promise he will not bother me anymore.

Plaintiff did then ask the Lieutenant to provide Protective Custody, and/or keep the ASHA Simonson away from me - as in not on the Compound where he can have access to me. My Requests were denied, and I was Ordered to go back to the General Population and be forced to be in the Presence of ASHA Simonson whom violated the Zero tolerance

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Practice, and Policy, of Title 42 U.S.C.  
§ 30308 ("PREA").

Plaintiffs claims were reported to be on video camera, and locatable through investigation that would normally take place BEFORE a conclusion of "Truth" or "Lie" was concluded.

Here, the Plaintiffs claims were deemed "Lie", and Plaintiff was not afforded the protections normally afforded to inmates during PREA reports. Plaintiff was plainly disbelieved, and was forced to be in the presence, and danger of the sexual perpetrator, while knowingly having mental health degradation that causes interruptions to Plaintiff's ability to eat, sleep, think, and enjoy basic daily functions due to the Crippling Effects Anxiety, panic attacks, and PTSD triggered by contact, physical and/or visual, that have been reported to effect this Chronic Mental Health Patient.

At around 3PM on 11/19/2018, Plaintiff refused to be put at Risk, and demanded Protective Custody due to fear of continued exposure to AHSA Simonsen that does cause mental health crisis with this Victim/Plaintiff.

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Defendants did then punish the Plaintiff for his refusal to be forced to be among ASHA Simonsen whom the Plaintiff/Victim Fears will be able to touch Plaintiff and force Plaintiff into sexual acts unwanted.

Plaintiff was ticked, and will continue to be ticked and loose earned, and unearned Good Time each week for refusing to be put back in the General Population were ASHA Simonsen awaits.

Here, the PREA standards for securing the safety of the Victim (Plaintiff) was ignored, and the Defendants plainly disbelieved the report WITHOUT ANY review of the video evidence. This descent from accreditation standards of PREA 30308 shows the Defendants do not qualify for there Eligibility of Federal PREA Grants.

Plaintiff is now in Special Housing Unit because he (myself) was forced to protect myself. However, the Defendants are currently punishing the Plaintiff with sanctions. see ticket enclosed.

## Request of Motion

1) Motion for Emergency Restraining Order to end Defendants Retaliatory Tickiting for his need for Protective Custody and Safe keeping from a Sexual Predator. Pursuant PREA, Defendants have denied all protective actions, and are now violating Plaintiffs Rights to Equal Protection under the law, and the Institutionalized Persons Rehabilitation Act for denying the PREA practices in which they collect grants to privilege.

2) Motion to Order Defendants to Cease and desist, Halt, or do not except any PREA Grants appropriations until this Honorable Court is shown the Defendants ARE in Full Compliance with all Standards, acts, and Practices of PREA and the Bureau of Prisons Policies that have adopted PREA standards.

3) Plaintiff asks that this Honorable Court Immediately process this filing, and send a Informer Paupcias application, and Civil Rights/Bruce complaint to be filled out and Mailed back without the pause of, or wait for refiling.

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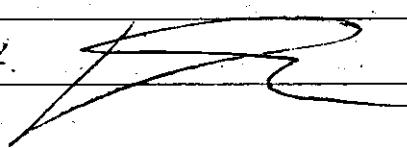
Plaintiffs mental Health will deteriorate rapidly if forced to be subjected to be in the presence of the Sexual Violator.

Plaintiff presents to this honorable Court a recently filed Federal Case in the 4th District of Maryland, being heard in Baltimore, Gambino v Hershberger et al, that was filed in 2017, and showcases a prior sexual assault by a Bureau of Prisons officer that was the cause of Plaintiffs Multiple Suicide attempts. Plaintiff now has tried to get Protection for another sexual verbal Assault before it escalated into a situation similar to Gambino v Hershberger did. However, the Defendants have chosen to disbelieve the Plaintiff, and then deny the Plaintiff the Protections he needs; and as required by PREA.

Plaintiffs tickiting, if allowed to continue will either force the Plaintiff out of protected custody and into a dangerous situation, and/or the Plaintiff's incarceration will be extended for self preservation of his body from sexual assault, or mental Health Crisis known to be the out come if forced to be in the presence of the Sexual Predator.

Plaintiff PREYS this honorable court will  
Immediately Intervene, and allow this Motion  
to Continue while Plaintiff Plaintiff files  
out the remaining forms.

The above is true and fact.

 11/15/2018

I, David Gambino, send a true copy  
to U.S. Courthouse, 235 North  
Washington Ave, Scranton PA 18503  
By - 11/15/2018

David Gambino 19757055

David Gambino

F.C.I. Schuykill

PO BOX 759

Minersville, PA 17954-0759

BP-A0288  
JAN 17

**U.S. DEPARTMENT OF JUSTICE**

## **INCIDENT REPORT**

FEDERAL BUREAU OF PRISONS

## **Part I - Incident Report**

1. Institution: FCI SCHUYLKILL		Incident Report Number:	
2. Inmate's Name: Gambino, David	3. Register Number: 19757-055	4. Date of Incident: 11-14-2018	5. Time: 4:55 pm
6. Place of Incident: Lieutenant's Office	7. Assignment: CMS WK POL	8. Unit: 3A	
9. Incident: Refusing PRGRM ASSIGN. ORDERS		10. Prohibited Act Code (s): 306, 307	

11. Description of Incident (Date: 11-14-2018 Time: 4:55 pm Staff became aware of incident):

On November 14, 2018 at approximately, 4:55 PM., I told inmate Gambino, David, Reg. No. 19757-055, to return to his assigned housing unit. The inmate stated "no" I then gave the inmate a direct order to leave the lieutenant's office. The inmate responded "no".

12. Typed Name/Signature of Reporting Employee:		13. Date And Time:	
J. Dugett		11/14/2018 9:00 pm	
14. Incident Report Delivered to Above Inmate By (Type Name/Signature): <i>D. Penny Dugett</i>		15. Date Incident Report Delivered: <i>11/15/18</i>	16. Time Incident Report Delivered: <i>11/15/18 2:25 PM</i>

**17. Comments of Inmate to Committee Regarding Above Incident:**

18. A. It is the finding of the committee that you:  
 Committed the Prohibited Act as charged:  
 Did not Commit a Prohibited Act.  
 Committed Prohibited Act Code (s). \_\_\_\_\_

B.  The Committee is referring the Charge(s) to the DHO for further Hearing  
C.  The Committee advised the inmate of its finding and of the right to file an appeal within 20 calendar days.

19. Committee Decision is Based on Specific Evidence as Follows:

20. Committee action and/or recommendation if referred to DHO (Contingent upon DHO finding inmate committed prohibited act):

21. Date and Time of Action: \_\_\_\_\_ (The UDC Chairman=s signature certifies who sat on the UDC and that the completed report accurately reflects the UDC proceedings).

**Chairman (Typed Name/Signature):**

**Member (Typed Name):**

Member (Typed Name):

**INSTRUCTIONS:** All items outside of heavy rule are for staff use only. Begin entries with the number 1 and work up. Entries not completed will be voided by staff.

Distribute: Original-Central File Record: COPY-1-DHO; COPY-2-Inmate after UDC Action; COPY 3-Inmate within 24 hours of Part I Preparation

HARRISBURG FA 171

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David Grambs 110 19757055

Federal Correctional Institution Schuykill  
P.O. Box 759  
Minersville, PA 17954-0759

Mailed from  
Federal Correctional Institution  
Schuykill, PA

TO U.S. Courthouse

PO BOX 1148  
Scranton, PA 18503

RECEIVED  
SCRANTON

NOV 20 2018

PER DEPUTY CLERK

16501-114648